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HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J

WRIT PETITION NO. 2878 OF 2005

Abdulla Yusuf

Versus

State of Chhattisgarh & Others

ORDER
(Passed on 9th day of February, 2007)

AFR

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Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J

WRIT PETITION NO. 2878 OF 2005

Petitioner : Abdulla Yusuf, S/o Late Abbas Ali Aged about 74 years, R/o Baidev Bagh, Rajnandgaon (CG)

Versus

Respondents :

1) State of Chhattisgarh through Secretary Department of Town & Country Planning DKS Bhavan Mantralaya Raipur (CG).

2) Assistant Director Town & Country Planning GE Road Rajnandgaon (CG).

3) Collector Rajnandgaon (CG).

4) Municipal Corporation, through Commissioner , Rajnandgaon (CG).

Present :

Shri Neelabh Dubey, counsel for the petitioner.

Shri AS Kachhawaha, Government Advocate for the State/respondents No.1 to 3.

Shri Sanjay K Agrawal and Shri Saurabh Sahni, counsel for respondent No.4.

O R D E R

(Passed on 9th day of February, 2007)

This petition under Article 226 of the Constitution of India, seeking the following reliefs :

> "Quashing demolition notice of the Commissioner of Municipal Corporation dated 1-7-2005 being Annexure P-10 as illegal and invalid."

2) Petitioner vide registered sale deed dated 29-6-1954 purchased land admeasuring 722 sq. mtrs. situated at G.E. Road, Rajnandgaon. Petitioner in the year 2001 filed an application before the Municipal Corporation (henceforth "the Corporation") seeking permission to construct a building

over the land. Vide permission dated 10-4-2001 the Corporation granted permission in accordance with various conditions laid therein. One of the conditions was that, the construction should be done after leaving an area of 22.50 mtrs. from the mid-road. When construction was in progress, the Corporation, finding violation of permission, issued notice directing the petitioner to construct the building in accordance with condition enshrined in the permission. That notice was replied by the petitioner vide letter dated 31-1-2002. Petitioner in his reply stated that leaving 5 mtrs. of his land he has started construction and in case he is asked to go behind, he will go back voluntarily on his own risk. Petitioner was again served with notice dated 3-7-2002 under Section 307 of the MP/CG Municipal Corporation Act, 1956 (for brevity "the Act, 1956") to show cause why unauthorized construction should not be removed.

3) Petitioner in the year 2002 again applied for grant of building permission for construction of the second floor on 17-12-2002. The said application was considered and permission was granted vide order dated 1-1-2003 subject to condition that he will make construction after leaving 22.50 mtrs. from the middle of the road as the road width is 45 mtrs. It is pertinent to mention here that the Department of Town and Country Planning also objected the earlier construction and for subsequent construction put a rider that the petitioner should make construction leaving 22.50 mtrs. from the middle of the road.

4) Petitioner did not object the validity of conditions imposed by the Corporation in building permission. He was again served with notice dated 25-6-2005 clearly stating that he was required to make construction leaving area 22.50 mtrs. from the middle of the road. , Petitioner replied to the notice. Having considered the same petitioner was again served with notice dated 1-7-2005 in order to grant opportunity of hearing to him with regard to

removal of unauthorized construction under Section 307(2)(3) of the Act, 1956. Petitioner failed to show sufficient cause and also did not remove the unauthorized construction, therefore, his unauthorized construction was liable to be removed. After due consideration in order to remove the unauthorized construction of the petitioner having done in 171.78 sq. mtrs of the land, final impugned notice has been served on him.

5) Learned counsel for the petitioner vehemently contended that the Corporation has no right to put a rider that building should be constructed leaving 22.50 mtrs. from the middle of G.E. road, and that being illegal, petitioner cannot be asked to remove a part of his construction. Learned counsel for the Corporation opposed the same and contended that the permission to construct the building was accorded to petitioner in accordance with law and conditions imposed were in accordance with the statutory mandate, therefore, a person breaking the law cannot be protected and they have right to remove the unauthorized construction.

6) For proper appreciation of the dispute provisions enshrined under Sections 293 to 297 & 307 of the Act, 1956 is required to be considered in its letter and spirit. All those provisions are quoted below :

> **"293. Prohibition of erection or re-erection of buildings without permission.** – (1) No person shall –
>
> (i) erect or re-erect any building; or
>
> (ii) commence to erect or re-erect any building; or
>
> (iii) make any material external alteration to any building; or
>
> (iv) construct or re-construct any projecting portion of a building which the Commissioner is empowered by section 305 to require to be set back or is empowered to give permission to construct or re-construct, --

(a) unless the Commissioner has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal of permission for the erection or re-erection of the building or for the construction or re-construction of the projecting part of the building; or

(b) after the expiry of one year from the date of the said permission or such longer period as the Commissioner may allow or from the end of the prescribed period, as the case may be:

Provided that nothing n this section shall apply to any work, addition or alteration which the Corporation may by byelaw declare to be exempt.

(2) If a question arises whether a particular alteration in or addition to an existing building is or is not a material alteration the matter will be determined by the Commissioner.

(3) Any person aggrieved by the order of the Commissioner in this behalf may appeal to the district court within thirty days of such order in the manner prescribed therefor and the decision of the district court shall be final.

294. Notice of buildings.- (1) Every person who intends to erect or re-erect a building shall submit to the Commissioner –

(a) an application in writing for approval of the site together with a site plan of the land; and in the case of land which is the property of the Government or of the Corporation, a certified copy of the documents authorizing him to occupy the land, and if so required by the Commissioner the original document or documents; and

(b) an application in writing for permission to build together with a ground plan, elevation and section of the building and a specification of the work to be done.

(2) Every plan of any building to be constructed wholly or partly of masonry, submitted under sub-section (1) shall, in token of its having been prepared by him or under his supervision, bear the signature of a licensed surveyor.

(3) Every document submitted under sub-section (1) shall be prepared in such manner and shall contain such particulars as may be prescribed.

(4) Nothing herein contained shall require a person to comply with the provisions of clause (b) of sub-section (1) until such time as the site has been

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approved by the Commissioner or such person as he may appoint.

295. Commissioner to refuse erection or re-erection of buildings.—(1) The Commissioner shall refuse to sanction the erection or re-erection of any building in contravention of any scheme sanctioned under section 291 or in contravention of any rule or byelaw made under the provisions of this Act.

(2) The Commissioner may refuse to sanction the erection or re-erection of any building if in respect of the building there are sufficient reasons which shall be communicated in writing to the applicant, why sanction should not be given, or if the land on which it is proposed to erect or re-erect such building is vested in the Government or in the Corporation and the consent of the Government or the Corporation, as the case may be, has not been obtained, or if the title to the land is in dispute between the applicant and the Corporation or the Government.

(3) Notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section (10) of Section 291 if the Commissioner within thirty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within sixty days of such receipt if the notice relates to a building on the same or part of the same site on which sanction for the erection of a building has been refused within the previous twelve months, neglects or omits to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re-erection, shall, unless the land on which it is proposed to erect or re-erect such building belongs to or vests in the Corporation, be deemed to have been sanctioned, except in so far as it may contravene any (rule) or byelaw or any town planning scheme sanctioned under this Act or any other enactment for the time being in force:

Provided that if an order granting or refusing such sanction is suspended under Section 421 the period specified by this sub-section shall commence to run afresh from the date of communication of final orders under the said sanction by the Government.

296. Grounds on which site of proposed building may be disapproved.—The Commissioner may on all or any of the following grounds refused to approve the site on which an applicant proposes to erect or re-erect any building—

(a) that the erection or re-erection of the proposed building on such site would be in contravention of a town planning scheme under

Section 291 or of any other provision of this Act or of any other enactment for the time being in force; or

(b) that the site is in a portion within the limits of the city in which the position and direction of the streets have not been determined and that the building which it is proposed to erect on such site will, in the opinion of the Commissioner, obstruct or interfere with the construction in future of suitable streets in such portion or with the drainage, water supply or ventilation thereof :

Provided that any person to whom permission to erect or re-erect a building on such a site has been refused may, by written notice to the Commissioner require that the position and direction of streets to be laid down in future in the vicinity of the proposed building should be forthwith determine, and if such requisition is not complained with within one year from the date thereof, may, subject to all other provisions of this Act applicable thereto, proceed with the erection of his building; or

(c) that the site has been reclaimed or used as a place for depositing sewage, offensive matter or rubbish or the carcasses of dead animals or is otherwise insanitary or dangerous to health; or

(d) that the site is in a portion within the limits of the city for which a town planning scheme has not been sanctioned by the Government and that the building which it is proposed to erect or re-erect on such site will, in the opinion of the Commissioner, be likely to conflict in a manner, to be communicated in writing to the applicant, with the provisions of a town planning scheme;

Provided that any person to whom permission to erect or re-erect a building on such a site has been refused may, by written notice to the Commissioner, require that the preparation of a town planning scheme for the portion in which the site is suitable shall be proceeded with as early as possible; and if the applicant is not informed in writing within twelve months of the date of the requisition that the Government have sanctioned the said town planning scheme, he may, subject to all other provisions of this Act applicable thereto proceed with the erection or re-erection of the building in respect of which the application was made.

297. Grounds on which permission to erect or re-erect building may be refused.—(1) The Commissioner shall not grant permission to erect or re-erect any building unless and until he has approved of the site thereof on an application under Section 294.

(2) The Commissioner shall not grant permission to erect or re-erect any building,—

(a) if the plans and specifications submitted with the application show that such building is not in accordance with a town planning schemed sanctioned under Section 291, or with any provision of this Act, or any rule or byelaw made thereunder, or any provision of any law for the time being in force; or

(a-1) if in his opinion the erection or re-erection of such building would be a nuisance or injurious to the inhabitants of the neighborhood to the public; or

(b) unless and until any plans, specifications or particulars called for by him are supplied.

307. Power to require removal or alteration of work not in conformity with byelaws or any scheme or any other requirement.—(1) If any building is erected or re-erected in contravention of any town planning scheme mentioned under section 291 or of any building byelaws made under section 427, the Commissioner without prejudice to his right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alteration therein as may be necessary to make it comply with the said scheme or byelaws.

(2) If a building is erected or re-erected—

(a) without any sanction as required by section 293(1), or

(b) when sanction has been refused, or

(c) in contravention of the terms of any sanction granted, or

(d) when sanction has lapsed under section 300,

the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under section 294, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such days as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorized by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorized by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(3) If such person fails to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the person.

(4) If the plans are (approved) by the Commissioner and the approval is communicated to the person intending to build the house or if the plans are rejected by the Commissioner but no notice of their rejection is given to person intending to build the house within the prescribed period it shall not be open to the Commissioner to give a notice under sub-section (1) and (2) on the ground that building is erected or re-erected in contravention of any scheme or byelaws or any other requirements under this chapter.

(5) Notwithstanding in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction for the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the byelaws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner, or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the Commissioner if not a party to be joined as a party to the proceeding."

Upon conjoint reading of all those provisions, it unveils that the Commissioner has no power or jurisdiction to accord permission to construct a building in violation of town planning scheme sanctioned under this Act, any rule, byelaws or any other enactment for the time being in force.

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7) Undisputedly Rajnandgaon Development Plan, 2001 has been published in accordance with Section 19 sub-section (5) of the MP/CG Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for brevity "the Adhiniyam, 1973") and the same came into existence with effect from 8-12-1993. The land belonging to the petitioner falls within *G.E. Road – F.C.I. Godown Marg Sangam Se Nala Ghat Marg Sangam Thak* and the width of road has been published 45 mttrs. Section 25 of the Adhiniyam, 1973 reads as below :

> **"25. Conformity with development plan.**-(1) After the coming into force of the development plan, the use and development of land shall conform to the provisions of the development plan:
>
> (Provided that the Zila yojana Samiti, may, as its discretion, permit the continued use of land for the purpose for which it was being used at the time of the coming into operation of the development plan:)
>
> Provided further that such permission shall not be granted for a period exceeding seven years from the date of coming into operation of the development plan.
>
> (2) Notwithstanding anything contained in section 172 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) every permission to divert land granted under that section shall be subject to the provisions of this Act."

The above provision clearly bars construction otherwise than in accordance with the development plan in force. Therefore, Commissioner, Corporation was not empowered to grant permission to construct a building over the land which falls within the precinct of proposed road and accordingly it was incumbent upon him to grant permission imposing a condition that construction should be made leaving 22.50 mtrs. of the land from middle of the road.

8) Here it is not out of place that in accordance with Section 26 of the Adhiniyam, 1973 petitioner has also a duty not to change the use of land

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without prior permission of the Director, in writing. Commissioner, Corporation granted permission on 10-4-2001 after receiving no objection from the Nazul Department and also mentioning that the permission is subject to Adhiniyam, 1973. Even in specific term it has been mentioned that it is necessary for the petitioner to comply MP Colony Adhiniyam, 1998, Master Plan Proposal, 2001, M.P. Land Development Act, 1984 and rules framed thereunder. He was also directed to observe the rules regarding environment.

9) Petitioner did not challenge the validity of the permission in accordance with the provisions for appeal or otherwise in accordance with the Act, 1956 and started construction even assuring the Corporation that on being asked by the Corporation he will remove the construction. When he further sought permission for construction of other floor, the permission was accorded by the Corporation on 1-1-2003 with a condition that he should construct leaving 22.50 mtrs. of land from middle of the road and this permission was also subject to conditions laid down by Assistant Director, Town and Country Planning Department, Rajnandgaon dated 17-12-2002, who not only directed but also marked with red ink up to which construction could be done, i.e. to say that the Department of Town and Country Planning, Rajnandgaon very specifically prohibited the petitioner from constructing within 22.50 mtrs. of land from the middle of the road. Permission was not challenged before any authority till after due hearing the instant removal notice of 2005 has been served on the petitioner.

10) Petitioner's further contention is that from the date of initial permission the Corporation started insisting that the construction be done by ensuring that from the center of the main road till a distance of 22.50 mtrs. no construction be done. The land belongs to him and without acquiring his land Corporation has no right to impose condition, disentitling

him to enjoy his land admeasuring 171 sq. mtrs., virtually it is indirect acquisition of land. On the other hand, it was opposed by learned counsel for the respondents.

11) Law prohibits construction without due permission from the Commissioner, Corporation and Commissioner has no right to grant permission against law of the land, therefore, in accordance with law he directed the petitioner to construct the building after leaving 22.50 mtrs. from middle of the road. The land still belongs and owns to the petitioner, it is not taken away by the Corporation or State or other authorities. Restriction for construction over 171 sq. mtrs. of the land, which falls within 22.50 meters from the middle of road has been imposed in accordance with law. Certainly in accordance with Development Plan the widening of road will be carried out and in accordance with law acquisition of land will be required.

12) In accordance with Section 24 of the Adhiniyam, 1973, the overall control of development and use of land vest in the State Government and State Government in accordance with Section 23–A of the Adhiniyam, 1973, has jurisdiction to modify the plan. Therefore, till land use is not modified by the State Government, no one has right to erect building over land which falls within the precincts of road. No doubt, owner of a land cannot be deprived of enjoyment without acquisition of his land by the Government for the purpose enshrined in the plan, but that does not authorize the owner to violate the law of the land and construct a building within the area planned for construction of road. At-most, in those circumstances, he may claim damages for his non-enjoyment in accordance with law. If law of the land prohibits anything that does not amount in direct acquisition. It is petitioner's misconception that he being the land owner can utilize it in his own sweet will. He is a citizen of India

and is bound by the law of land, therefore, deliberate disobedience of law and willful default which amount to keep the petitioner in a category of law breaker, has no right to escape from demolition of his unauthorized construction.

13) Hitherto petitioner has no right or legal authority to enjoy unauthorized construction. Since 2001 when permission was granted he was forbidden from making construction over 171 sq. mtrs. of land which falls within 22.50 mtrs. from the middle of the road. He not only disobeyed the conditions but also admitted it and assured the Corporation that as and when he is required to vacate, he shall willfully vacate the unauthorized construction. If at all he was of the view that the imposition of condition was unauthorized, he should have taken recourse to appeal or other statutory remedies available in accordance with the Act, 1956 or otherwise, but he did not ventilate any grievance before such forums. Again in 2003 when permission to construct second floor was granted, the restriction was imposed. Even Assistant Director, Town and Country Planning Department, Rajnandgaon, by marking with red ink restricted the petitioner not to construct the portion outside the red mark, but petitioner feeling himself above the law deliberately disobeyed the law of land and raised construction and now when after following due procedure he is required to remove the unauthorized construction or else unauthorized construction will be removed by the Corporation, he has approached this Court for rescue. I am of the opinion that such a law breaker should not be given any shelter.

14) Article 226 of the Constitution of India only empowers the Court to protect a legal enforceable right of a person. Here in the instant case, petitioner has no right to construct in violation of the permission granted by the Corporation and objected by the Department of Town and Country Planning, Rajnandgaon, even prohibited under Rajnandgaon Development

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Plan, 2001, therefore, he has no legal right to protect his unauthorized construction, hence the Court is not obliged to step in under Article 226 of the Constitution for his rescue. Here again, it is not out of place to mention that the dispute arose in the year 2001, but the petitioner slept over it, therefore, the instant petition also suffers from unexplained delay and laches. Even otherwise, if he has any grievance, he should have taken recourse to it in accordance with the Act, 1956 or otherwise. He instead, willfully disobeying the law of land, made unauthorized construction, feeling himself above the law.

15) For the foregoing reasons, the petition deserves to be dismissed and is accordingly dismissed. No costs.

Sd//-
V.K.Shrivastava
Judge

Gowri